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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

THE GOLD BONDHOLDERS PROTECTIVE COUNCIL, INC,
Petitioner,

v.

THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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QUESTIONS PRESENTED

1. Did the nation waive its sovereign immunity as to the debts of the United States by the approval of Section 4 of the Fourteenth Amendment?

2. When the United States had waived its sovereign immunity at the time it issued a Government bond, may the Congress thereafter withdraw the right to sue the United States without violating the Constitutional rights of the bondholder?

3. Does 31 U.S.C. § 773b, by closing the doors to all federal courts effective only as to holders of gold bonds from 1935 to 1975, result in an unconstitutional substantive enactment?[1]

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[1] The caption contains the names of all parties.

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The petitioner, The Gold Bondholders Protective Council, Inc., prays that a writ of certiorari be issued to review the judgment of the United States Court of Claims entered in this proceeding on April 7, 1982.

OPINION BELOW

The opinion of the Court of Claims (Appendix A, *infra* 1a), is reported at 676 F. Supp. 643 (1982).

JURISDICTION

The judgment of the Court of Claims (Appendix A, *infra* p. 1a, 7a) was dated April 7, 1982, and was entered the same day.

The jurisdiction of the Court of Claims was invoked under 28 U.S.C. §§ 1346 and 1491. The jurisdiction of this Court is invoked under 28 U.S.C. § 1255(1).

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

The pertinent provisions of the United States Constitution provide:

ARTICLE III.

* * * * * *

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; * * * — to Controversies to which the United States shall be a party; * * *.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

* * * * * *

AMENDMENT V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV.

* * * * * *

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. * * *

* * * * * *

The statute purporting to withdraw the jurisdiction of the Court of Claims is 31 U.S.C. § 773b which provides:

> Any consent which the United States may have given to the assertion against it of any right, privilege, or power whether by way of suit, counterclaim, set-off, recoupment, or other affirmative action or defense in its own name or in the name of any of its officers, agents, agencies, or instrumentalities in any proceeding of any nature whatsoever (1) upon any gold-clause securities of the United States or for interest thereon, or (2) upon any coin or currency of the United States, or (3) upon any claim or demand arising out of any surrender, requisition, seizure, or acquisition of any such coin or currency or of any gold or silver and involving the effect or validity of any change in the metallic content of the dollar or other regulation of the value of money, is withdrawn: *Provided*, That this section shall not apply to any suit commenced prior to August 27, 1935, or which may be commenced by January 1, 1936, or to any proceeding referred to in this section in which no claim is made for payment or credit in an amount in excess of the face or nominal value in dollars of the securities, coins, or currencies of the United States involved in such proceeding.

STATEMENT

Plaintiff, a Delaware corporation, is the owner of a $50 4-1/2% Gold Liberty Bond of 1933-38, which was issued October 24, 1918. The bond provided that the United States would pay the principal and interest in gold coin "of the present standard of value" upon presentation by the bearer to the Treasurer of the United States on or after October 15, 1938. On April 2, 1981, plaintiff's administrator presented the bond to the Treasury Department with a qualifying letter, demanding that the bond be returned to him in its present form unless payment was made either in gold coin or in United States currency having a face value sufficient to purchase gold coin equivalent to the value of the gold coin promised in the bond. By letter of April 14, 1981, the Treasury Department returned the bond to plaintiff's representative with the statement that his submission could not be treated as a presentation and surrender of the bond for payment because of the conditions which had been imposed. Thereafter, plaintiff filed this suit to recover the sum of $1,253.02 on its $50 bond, since gold was selling on the open market for approximately $518 an ounce on the date the bond was presented for payment. (Appendix A. *infra*, p. 2a.)

The case was heard by the Court below on cross motions for summary judgment, and it was noted that the facts are not in dispute (Appendix A, *infra*, 2a).

REASONS FOR GRANTING THE WRIT

I

The Court of Claims has decided an important question of constitutional law which has not been squarely met by opinions of this Court. The basic issue is whether Congress under the Constitution has the power to remove from the judiciary the ability to consider a constitutional question.

The opinion most often cited in this area is *Ex Parte McArdle*, 74 U.S. 506 (1869), in which the right of Congress to curtail the appellate jurisdiction of the Supreme Court was upheld, but with the recognition that this curtailment did not effect the jurisdiction previously exercised (p. 515).[2] In *United States* v. *Klein*, 80 U.S. 128, 146 (1872), it was held that Congress may not instruct the Supreme Court as to its handling of a particular case. Another case cited on this issue is *Lynch* v. *United States*, 292 U.S. 571 (1934), but despite the broad language used in that opinion the Supreme Court held that the statute involved had actually not withdrawn its jurisdiction and it reversed the holdings of the lower courts (292 U.S. at 587 and 589). The Norris-La Guardia Act which withdrew the right of the federal courts to issue injunctions was upheld in *Lauf* v. *E. G. Shinner & Co.*, 303 U.S. 323 (1938), but in that case legislation had provided alternative procedures for resolving controversies among the parties.[3]

If the opinion below is permitted to stand there will be no jurisdiction in which a litigant may test the con-

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[2] The previous opinion the year before, *Ex Parte McArdle*, 73 U.S. 318, 324 (1868), set forth the other routes open to litigants.

[3] Among the numerous articles on this subject are: Hart, *The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectics*, 66 Harv. L. Rev. 1362, 1365 (1953); Wechsler, *The Courts and the Constitution*, 65 Colum. L. Rev. 1001, 1006 (1965); Van Alystyne, *A Critical Guide to Ex Parte McArdle*, 15 Ariz. L. Rev. 229 (1973); Eisenberg, *Congressional Authority to Restrict Lower Federal Court Jurisdiction*, 83 Yale L. J. 498, 514 (1974); Redish and Woods, *Congressional Power to Control the Jurisdiction of Lower Federal Courts: A Critical Review and a New Synthesis*, 124 U. Pa. L. Rev. 45, 76 (1975); and Rotunda, *Congressional Power to Restrict the Jurisdiction of the Lower Federal Courts and the Problem of School Busing*, 64 Geo. L. J. 839, 851 (1976).

stitutionality of 31 U.S.C. § 773b. Such a situation makes a mockery of the age-old belief that for every wrong there should be a remedy.

II

The opinion below should also be reviewed to establish that sovereignty under the Constitution is vested in the people[4] and not in Congress. In Section 4 of the Fourteenth Amendment the citizens legislated to provide that the "validity of the public debt * * * shall not be questioned" (*supra*, p. 3). The Constitution is the supreme law of the land.

The opinion below, however, allows Congress to make a nullity of Section 4 by a provision withdrawing the jurisdiction of the courts with reference to a limited group of people who were holding the Liberty Bond portion of the public debt. But Congress is the agent of the people. It should not be permitted to thwart the will of the people as announced in the Constitution. *Battaglia* v. *General Motors Corporation*, 169 F.2d 254, 257 (2d Cir. 1948).

It was noted in the case of *Perry* v. *United States*, 294 U.S. 330 (1935) that the 1933 Joint Resolution there involved "went beyond the congressional power" (p. 354). If the basic resolution with respect to gold clauses of government obligations exceeded the power of Congress, then it would logically follow that a jurisdictional statute seeking to accomplish the same objective would likewise "exceed congressional power."

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[4] *Perry* v. *United States*, 294 U.S. 330, 353 (1935).

III

The writ should be granted because the issue involved presents an important principle of law.[5] If Congress has authority to withdraw the jurisdiction of the courts in cases involving money, it logically follows that it has the same authority in cases presenting such emotionally charged problems as busing, abortions and school prayer.[6]

Once legislation curtailing jurisdiction of all routes to the Supreme Court is allowed to stand a Pandora's Box will have been opened. The nation then will no longer have three co-ordinate branches of government. The legislative branch will decide all important questions.

IV

The writ should also be granted to decide the relationship of the Fifth and Fourteenth Amendments to the Exceptions Clause of Article III.

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[5] There are presently pending in Congress numerous bills to withdraw jurisdiction of the federal courts. On May 20, 21 and June 22, 1981, extensive hearings were held by the Subcommittee on the Constitution of The Committee on the Judiciary, 97th Cong., 1st Sess., which were entitled:

> Oversight Hearings to define the Scope of the Senate's Authority under Article III of the Constitution to Regulate the Jurisdiction of the Federal Courts (Serial No. J-97-30).

At these hearings a number of authorities on constitutional law presented their views as to the reach of Congressional legislation in this context.

[6] The House of Delegates of the American Bar Association voted almost unanimously in favor of a resolution urging Congress not to enact legislation purporting to curtail the jurisdiction of the federal courts. (68 A.B.A.J. 159, February, 1982, and 68 A.B.A.J. 386, April, 1982).

If there was originally any doubt as to the inability of Congress to withdraw the jurisdiction of the courts in actions involving the bonds of the Government, it is submitted that that doubt was removed by the Fifth Amendment. That Amendment provides that the Government may not take private property without just compensation and without due process of law.

Such a possible doubt was also removed by Section 4 of the Fourteenth Amendment providing that the validity of the public debt "shall not be questioned."

There is a rule of statutory construction to the effect that if there is any inconsistency between two statutes the latest expression of the legislature is to control.[7] In amending the Constitution, the citizens are the legislative body, and the same rule of statutory construction should apply.[8]

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[7] 2A Sutherland Statutory Construction, § 51.02 (4th Ed. 1973).

[8] Cf. *The Federalist*, Alexander Hamilton Paper No. 78.

CONCLUSION

This Court has held that the Government may not repudiate its obligation under the Liberty Bonds. Congress should not be permitted to accomplish the same result by the unhealthy precedent of attempting to withdraw the consent of the Government to be sued.

Respectfully submitted,

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